

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Catherine McCaw	Team: Team # 4	CCRB Case #: 200405915	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 06/19/2004 11:00 PM	Location of Incident: Hicks St. & Corsa Ave., Bronx	Precinct: 47	18 Mo. SOL 12/19/2005	EO SOL 12/19/2005	
Date/Time CV Reported Sun, 06/20/2004 11:34 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 06/20/2004 11:34 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. POM Kevin Mccarthy	00781	896525	PBBX AC
3. POM Sean Fogarty	21939	920293	PBBX AC
4. CPT Dermot Shea	00000	899846	PBBX AC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Sean Lynch	10212	917115	PBBX AC
2. LT Peter Fiorillo	00000	904789	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.CPT Dermot Shea	Abuse: Capt. Dermot Shea authorized the stop of the car in which § 87(2)(b) was an occupant.	
B.POM Kevin Mccarthy	Force: PO Kevin Mccarthy pointed his gun at § 87(2)(b) § 87(2)(b)	
C.POM Sean Fogarty	Force: PO Sean Fogarty used physical force against § 87(2)(b) § 87(2)(b)	
D.POM Kevin Mccarthy	Abuse: PO Kevin Mccarthy threatened § 87(2)(b) with the use of force.	
E.POM Sean Fogarty	Abuse: PO Sean Fogarty searched the car in which § 87(2)(b) § 87(2)(b) was an occupant.	
F. An officer	Abuse: An officer damaged § 87(2)(b) s property.	

### Synopsis

On June 19, 2004, at approximately 11:00 PM, § 87(2)(b) was pulling out of a parking space near the intersection of Hicks St. and Corsa Ave. in the Bronx. An unmarked police car occupied by Capt. Dermott Shea, PO Kevin McCarthy and PO Sean Fogarty pulled up beside him (Allegation A). PO McCarthy allegedly pointed his gun at § 87(2)(b) (Allegation B), at which point he became afraid and fled the scene. The police vehicle caught up with § 87(2)(b) several blocks later. PO Fogarty pulled § 87(2)(b) from the car and placed him in handcuffs (Allegation C). § 87(2)(b) tried to explain what had happened, but PO McCarthy threatened to punch him if he did not stop laughing (Allegation D). After § 87(2)(b) was in handcuffs, he was placed in the back of the police car and, from there, saw PO Fogarty search his car (Allegation E). PO Fogarty drove the car back to the 47 Pct. stationhouse while § 87(2)(b) was driven in the police car. At the stationhouse, § 87(2)(b) received summonses § 87(2)(a) 160.50

These summonses were later dismissed because they were defective. When § 87(2)(b) returned to his car, he noticed that the radio had been damaged and the rear driver side seat had been ripped (Allegation F). He then went to the hospital to obtain medical treatment for general body pain and a flare-up of his sickle cell disease. Although § 87(2)(b) expressed some interest in suing the city, he did not file a notice of claim within ninety days of the incident.

§ 87(2)(b), § 87(2)(g)

### Summary of Complaint

§ 87(2)(b) filed a complaint with the CCRB on June 20, 2004. He provided a formal statement to the CCRB on August 6, 2004. The interview was conducted by former Inv. Abiola Adedeji and Inv. Erik Grubin. § 87(2)(g)

On June 19, 2004, at approximately 11:00 PM, § 87(2)(b) was pulling out of a parking space in order to allow his friend to pull in. § 87(2)(b)'s friend did not witness the incident, however. As he was doing so, an unmarked police vehicle pulled up alongside him. § 87(2)(b) did not realize at this point in time that the men inside the car were police officers. The driver of the car, subsequently identified as PO Kevin McCarthy, pulled a black metal object from his waistband and pointed it at § 87(2)(b). § 87(2)(b) became frightened and drove off.

A couple of blocks away, § 87(2)(b) was forced to stop driving because other vehicles were impeding his progress. He looked back and saw the police car behind him, this time with a red dome light on top of it. At this point, § 87(2)(b) realized that the men were police officers. PO Sean Fogarty walked up to his car, opened the door, and then pulled him out of the car. He placed one of § 87(2)(b)'s hands behind his back, pushed him to the ground, frisked him and searched him. Capt. Dermott Shea twisted his arm, placed him in handcuffs and put him in the back of the police car. § 87(2)(b) observed Capt. Shea and PO McCarthy searching his car. He insisted to the officers that he had not done anything wrong. PO McCarthy told § 87(2)(b) that he would "punch [him] in the mouth if [he] d[id] not stop laughing." § 87(2)(b) tried to explain that he was afraid because he thought the officers were "killers." § 87(2)(b) stated that at the time of the incident, he did not have his driver's license with him.

After he was taken to the stationhouse, § 87(2)(b) was issued four summonses: § 87(2)(a) 160.50

He

also heard someone refer to PO McCarthy as, “Kevin.” § 87(2)(b) was released, along with his car, and allowed to drive home. Upon returning to his car, he realized that it had been damaged, specifically that the radio had been broken and the rear passenger side seat had been ripped. He submitted photographs of the damage during his CCRB interview. § 87(2)(b) also began to suffer a flair-up of his sickle cell anemia and pain to his wrist and shoulder as a result of the incident. He went to the emergency room of § 87(2)(b) in the Bronx and received treatment. § 87(2)(b) also stated at the time of interview that he had been informed that the summonses he had received during the course of the incident were “defective,” so he would not need to go to court to dispute them.

## **Results of Investigation**

### **Medical Records**

*Ambulance Call Report.* On § 87(2)(b), § 87(2)(b) was transported to the hospital by Emergency Medical Services. § 87(2)(a)

*Hospital Records.* § 87(2)(a)

§ 87(2)(b) The hospital did not observe any external signs of injury on § 87(2)(b) and discharged him with anti-inflammatory drugs approximately § 87(2)(b) after being admitted.

### **Officer identification**

PO Sean Lynch’s name appears on the summonses that § 87(2)(b) received during the course of this incident. During his CCRB interview on March 22, 2005, PO Lynch stated that he had not been present during the incident and that PO McCarthy had provided the information to him. In addition, § 87(2)(b) stated that he had heard one of the officers referred to as “Kevin” during the course of the incident. He identified this officer as PO Kevin McCarthy based on a photographic array conducted during his CCRB interview and described PO McCarthy’s role. During his March 25, 2005 CCRB interview statement, PO McCarthy confirmed his presence during the incident and added that PO Sean Fogarty and Capt. Dermott Shea were also present.

§ 87(2)(b), § 87(2)(g)

### **Officer statements**

#### *PO Kevin McCarthy*

PO Kevin McCarthy was interviewed at the CCRB on March 24, 2005. The interview was conducted by SI Kolawole Olosunde. PO McCarthy did not have any memo book entries pertaining to the incident.

On June 19, 2004, PO McCarthy was the driver of an unmarked vehicle. Capt. Dermott Shea and PO Sean Fogarty were passengers of the vehicle. PO McCarthy was traveling southbound on Hicks Ave. in the Bronx when they saw a car double-parked traveling northbound. § 87(2)(b) the driver of the car, appeared to be twelve or thirteen years of age § 87(2)(b), § 87(2)(g)

PO McCarthy pulled up alongside the car, informed

him that they were police officers and asked him routine questions such as why he was double-parked and who owned the car. As he was doing so, PO McCarthy noticed that both lanes of traffic were being cut off. He told § 87(2)(b) that he was going to make a U-turn and pull up behind him to ease traffic. As he was making the turn, § 87(2)(b) began to drive away at a high rate of speed, nearly hitting several pedestrians. PO McCarthy did remove his weapon during the initial encounter

After driving for about three blocks, § 87(2)(b) was blocked by oncoming traffic and could go no further. PO Fogarty approached the car and instructed § 87(2)(b) to step out of the car. He did so voluntarily. PO Fogarty and PO McCarthy then placed him in handcuffs. PO McCarthy stated that it was not necessary to use any force against § 87(2)(b) because he was extremely small and fragile. § 87(2)(b) was placed in the back of the police car, and one of the officers—PO McCarthy could not recall who—drove § 87(2)(b)'s car back to the police precinct. At no point in time did PO McCarthy threaten to punch § 87(2)(b). PO McCarthy stated that that he would assume that the officer driving § 87(2)(b)'s car would have looked in the immediate vicinity of the drivers seat to make sure that there was nothing dangerous in the car before driving it. § 87(2)(b) was released with summonses.

#### *Capt. Dermott Shea*

Capt. Dermott Shea was interviewed by the CCRB on May 12, 2005. § 87(2)(g) He described § 87(2)(b) as driving off as soon as he heard the word "police," rather than after PO McCarthy began to make a U-turn. He also stated that PO Fogarty did pull § 87(2)(b) out of his vehicle and explained that in his view, doing so was necessary because § 87(2)(b) had only stopped because there was too much traffic in front of him to move forward. If the traffic had cleared up before § 87(2)(b) got out of the car, he could have driven off again. PO Fogarty thus needed to ensure that § 87(2)(b) was removed from his car as quickly as possible. After § 87(2)(b) was removed from his car, he was extremely apologetic and indicated that he had fled the scene because he was scared. He never indicated that he did not realize that PO McCarthy, PO Fogarty and Capt. Shea were not police officers.

#### *PO Sean Fogarty*

PO Sean Fogarty was interviewed at the CCRB on May 19, 2005. § 87(2)(g) He stated, however, that § 87(2)(b) was initially stopped because he was not wearing his seatbelt. He agreed with PO McCarthy that § 87(2)(b) began to drive off after PO McCarthy told him they were going to make a U-turn. He stated that § 87(2)(b) stopped because he nearly got into a head-on collision with another car and that this car was subsequently blocking § 87(2)(b) from traveling forward. Initially, PO Fogarty stated that he approached § 87(2)(b)'s door and handcuffed one of his wrists, at which point § 87(2)(b) got out of the car voluntarily. Later in his interview, however, he conceded that he pulled § 87(2)(b) out of the car. He stated that he did so because he feared that the vehicle might have been stolen or that § 87(2)(b) might have been armed, so he took the step of removing § 87(2)(b) from his vehicle for his safety. He stated that after § 87(2)(b) was removed from the car, he was placed against the side and placed in handcuffs. He did not require anyone's assistance to get § 87(2)(b) in handcuffs because § 87(2)(b) was generally compliant.

After § 87(2)(b) was placed in the back of the police vehicle, PO Fogarty drove his car back to the 47 Pct. stationhouse. He indicated that the car was in generally poor condition, though he did not notice any damage to the rear car seat or to the radio and he did not know how the car might have come to be damaged. Before driving the car, PO Fogarty did a quick check of the car in the immediate vicinity of the seats to make sure that he did not sit on any dangerous objects and to locate the car's registration in the glove compartment.

#### **Civilian and Officer Histories**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(4-b), § 87(2)(g)

Neither officer has any other substantiated CCRB

allegations. In CCRB case 200306684, Capt. Dermott Shea had allegations of a vehicle stop, a frisk, a vehicle search § 87(4-b), § 87(2)(g) substantiated against him. He received instructions.

### **Conclusions and Recommendations**

#### **Disputed and Undisputed Facts**

It is not in dispute that § 87(2)(b) a man who looks much younger than his actual age, was stopped by Capt. Dermott Shea, PO Sean Fogarty and PO Kevin McCarthy. After a brief interaction, § 87(2)(b) drove away without permission. He was apprehended a few blocks later when traffic impeded his progress. PO Fogarty forcibly removed him from his car and placed him in handcuffs. PO Fogarty subsequently searched the car and drove it back to the stationhouse. After a short period of time, § 87(2)(b) was released with summonses.

§ 87(2)(b), § 87(2)(g) He claims that PO McCarthy pulled a gun on him, prompting him to flee because he did not realize that he was being stopped by the police. In addition, § 87(2)(b) stated that PO McCarthy threatened him and that damage was done to his car while it was in police custody.

#### **Credibility**

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

**Allegation A: Capt. Dermott Shea stopped the car in which § 87(2)(b) was an occupant.**

§ 87(2)(b), § 87(2)(g)

Both he and PO McCarthy indicated that § 87(2)(b) was double-parked when they stopped him. § 87(2)(b) indicated that he was pulling his car out of a parking spot which he was reserving for a friend. § 87(2)(b), § 87(2)(g)

**Allegation B: PO Kevin McCarthy pointed his gun at § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

**Allegation C: PO Sean Fogarty used physical force against § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) indicated, however, that he suffered body pain as a result of the force used against him. § 87(2)(b), § 87(2)(g) He indicated that PO Fogarty pulled him out of the car, placed him on the ground and, with the assistance of PO McCarthy, placed him in handcuffs. He also complained of pain to his wrist and shoulder as a result of being handcuffed. § 87(2)(b), § 87(2)(g) Although he did complain of general body pain, the medical personnel who saw him observed no external indication of injury. Furthermore, § 87(2)(b) suffers from sickle cell disorder, a disease that can cause body pain during flare-ups. § 87(2)(g)

**Allegation D: PO Kevin McCarthy threatened § 87(2)(b) with the use of force.**

§ 87(2)(b), § 87(2)(g)

**Allegation E: PO Sean Fogarty searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) stated during his CCRB interview that PO McCarthy and Capt. Shea searched his car. PO Fogarty admitted to searching the car, however, while neither Capt. Shea nor PO McCarthy stated that they were involved in the search of § 87(2)(b)'s vehicle. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) PO Fogarty stated that he did a check of the area around the seats to ensure that there was nothing dangerous and looked in the glove compartment to locate § 87(2)(b)'s paperwork.

§ 87(2)(b), § 87(2)(g)

**Allegation F: An officer damaged § 87(2)(b)'s property.**

§ 87(2)(b) stated that when his car was returned to him at the conclusion of the incident, his radio and his rear passenger seat were damaged. § 87(2)(b), § 87(2)(g)

Furthermore, PO Fogarty, who was responsible for driving the car back to the stationhouse, stated that it was not in police custody to be inventoried. As such, there is no documentation for the condition of the car. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

### **Allegations not Pleaded**

§ 87(2)(b) stated that Capt. Shea used force against him to place him in handcuffs. PO McCarthy stated that he had in fact assisted PO Fogarty in putting § 87(2)(b) into cuffs. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) was also frisked subsequent to his arrest. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: